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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/214,022	12/23/1998	ROLF LASSON	TP1192-US	6097

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TETRA PAK US INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 11/03/2003

29

Please find below and/or attached an Office communication concerning this application or proceeding.

CLO-29

Advisory Action

Application No.

09/214,022

Applicant(s)

LASSON, ROLF

Examiner

Alicia Chevalier

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 14-17 and 27-30.

Claim(s) withdrawn from consideration: 19-26.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: It remains the Examiner's position that the claims are unpatentable for reasons previously of record in the final office action.

Applicant's arguments filed in paper #28 regarding the issue that Zinn fails to disclose that the layers are coextensive have been carefully considered but are deemed unpersuasive, see page 5, the forth paragraph bridging page 6, the first line of paper #28.

As stated in the final office action, paper #27 page 5 the last paragraph bridging page 6 the first paragraph, the Examiner stated, "it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the layers coextensive. One of ordinary skill would be motivated to do so because it would make manufacturing the cartoon faster and insure the entire cartoon would be liner," is based on what is old in the art. As evidenced by Kucjenbecker (3,078,768), Stenger (2,837,261) and McGrady (2,218,246) having coextensive liner and base layers well known in the art. Furthermore, in response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In re McLaughlin, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971). In the instant case the examiner has provided for evidence, as shown by the references cited above, that having the first and second (liner and base) layers coextensive is old in the art.


Applicant's arguments filed in paper #28 regarding the issue that process limitations are given little or no patentable weight and that the method of forming the product is not germane to the issue of patentability have been carefully considered but are deemed unpersuasive, see page 6, the first and second paragraph of paper #28.

As stated in the final office action, paper #27 page 6 the second paragraph, the Examiner stated, the limitation the first and second layers are darkened are merely referring to a special process of laminating the two layers to on another, see specification page 7, line 24 to page 8, line. Applicant also to disclose other alternate methods for bonding the layers together, specification pages 7 and 8. As such, since it is merely referring the way the layers are bonded together it is considered a process limitation. Applicant has not shown how this limitations structurally differentiates from the prior art of record.

Applicant's arguments filed in paper #28 regarding the above remarks vis-à-vis of Zinn to provide the basis for an obviousness rejection of the pending claims, claims 15, 17, and 29 are allowable over the art of record for the same reasons that their base claims are allowable have been carefully considered but are deemed unpersuasive, see page 6, the forth paragraph bridging page 7, the third paragraph of paper #28.

The remarks regarding the deficiencies of the basis rejection over Zinn in view of the background information in Applicant's specification have already been addressed above.

AC
10/29/03


HAROLD PYON
SUPERVISORY PATENT EXAMINER
11/12

10/29/03